

Publication: Australian Construction Law Newsletter
Date: March/April 2009
Page No: 56
Author(s): James Schluter (of Holding Redlich)
Publisher: University of Technology NSW

Rare employee prosecution highlights employee obligations and the impact of new technology

A recent Magistrate Court decision reinforces the fact that it is not just employers who are responsible for safety. A young worker lost his job, his forklift licence and received a criminal conviction after posting a video of himself on YouTube, doing stunts on a forklift.

Employee prosecution was a rare but important case

In a relatively rare prosecution, WorkSafe successfully brought the action against a 20 year old employee for breaching his obligations as an employee under the *Occupational Health and Safety Act 2004*. The video showed the man deliberately crashing into concrete pipes, doing burnouts and overloading the machine so he could do wheelies. The employee was not wearing a seatbelt at the time of the filming.

The video had been online for two months, before the man's manager saw it in July 2007. The employee was later sacked for misconduct. The video has since been removed.

Conviction

In convicting the employee, Magistrate Caitlin English ordered the man to do 50 hours of unpaid community work, complete a five-day day health and safety course, and pay WorkSafe's court costs of \$1200.

Forklifts are one of the most dangerous pieces of mobile plant in workplaces. Incidents involving forklifts can result in serious injury and death and workplace regulators have waged regular education and enforcement campaigns against employers over the last ten years. This prosecution appears to be the first involving an employee.

Technology in the workplace is posing new risks and challenges

The posting of the film on YouTube attracted the specific attention of WorkSafe, who indicated that this act encouraged others to engage in similar behaviour. In addition to this, we have found that our clients are seeing a growing trend in younger employees using public social networking sites to post details of activities that previously would have stayed within the confines of the workplace.

The increasing penetration of technology and mobile cameras into the workplace, and the frequency in which this technology is used by staff whilst at work, poses a number of issues for employers and staff. These include being able to obtain clear evidence of safety issues, inappropriate recording of company commercial secrets, invasion of employee privacy and new hazards relating to employee attention, focus and diligence in the workplace.